
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

R. S.A. No. 3853 of 2007

Date of decision: 4.12.2007

Joginder Singh

...Appellant

Versus

Bimla Kumari

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. D. S. Rajput, Advocate for the appellant.

Mr. Anil Chawla, Advocate for respondent-Caveator

RAJESH BINDAL, J.

The defendant is in second appeal against the judgment and decree of the Lower Appellate Court whereby that of the trial Court was affirmed in a suit for possession filed by the respondent/plaintiff.

The case set up in the suit for possession is in respect of one room and court yard built on plot No. 13, Khasra No. 764 measuring 103 yards. It was pleaded that respondent/plaintiff had purchased two plots bearing Nos. 13 and 14 measuring 206 sq. yards in total with super structure thereon vide registered sale deed dated April 30, 1984 executed for consideration of Rs. 12,000/- by Nand Kishore and Vidya Sagar Anand. As the premises was under tenancy with the appellant/defendant, ejectment petition was filed on the ground of bonafide need. However, in these proceedings, it was held that appellant was tenant in the house built on plot No. 14 whereas he had encroached upon the building of plot No.13. The appellant was ordered to be evicted from plot No.14 in the eviction proceedings, however, for plot No.13 present suit was filed, which has been decreed by both the Courts below.

Learned counsel for the appellant submitted that in the absence of any evidence to prove that respondent/plaintiff is the owner of the property, the suit for possession could not possibly be decreed. He submitted that sale deed in her favour was not proved as the vendors thereof

were not examined. There was no entry of the sale deed in the revenue record or municipal record. However, when confronted with the admission made by the present appellant in the grounds of appeal filed before the Ist Appellate Court and the facts recorded by the learned Lower Appellate Court in para 8 of the judgment to the effect that learned counsel for the appellant did not dispute the ownership of the property, in my opinion, the issue can not be raised before this court. As far as the plea of adverse possession is concerned, the possession of the appellant cannot possibly be held to be hostile. In reply to the notice Ex. A-2 dated November 21, 1983 got issued by the vendors of the respondent/plaintiff, the appellant vide Ex. A-2/1 dated December 12, 1983 admitted that he had not encroached upon the premises in dispute and was inducted as a tenant by the earlier owners Nand Kishore and Vidya Sagar Anand and he had been paying the rent to them. Thereafter, there is litigation going on between the parties.

Under these circumstances, it cannot possibly be concluded that possession of the appellant was hostile and the plea of the adverse possession could be raised by him. The findings recorded by the Courts below are plain and simple findings of fact recorded on appreciation of evidence, which cannot possibly be held to be perverse.

Accordingly, I do not find any substantial question of law arises in the present appeal and the same is dismissed.

December 04, 2007
Pka

(Rajesh Bindal)
Judge
